

PT 02-18

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

PIONEER CIVIC SERVICES	) A.H. Docket #	01-PT-0043
Applicant	) Docket #s	00-72-141 & 00-72-142
	) Parcel Index #s	18-07-380-002,
v.	)	18-07-380-008,
	)	18-08-489-003 through 18-08-489-007
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe
OF THE STATE OF ILLINOIS	)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. David M. Couri for Pioneer Civic Services; Mr. George Logan, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held on October 23, 2001, to determine whether Peoria County Parcel Index Nos. (hereinafter referred to as PIN[s]) 18-07-380-002, 18-07-380-008, and 18-08-489-003 through 18-08-489-007 qualified for exemption during the 2000 assessment year.

Helen Crum, executive director of Pioneer Civic Services, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcels during the 2000 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether these parcels were used by the applicant for exempt purposes during the 2000 assessment year. After a thorough review of the facts and law presented, it is recommended that the exemptions be denied. In support thereof, I make the following findings and conclusions in

accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Peoria County PINs 18-07-380-002, 18-07-380-008, and 18-08-489-003 through 18-08-489-007 did not qualify for a property tax exemption for the 2000 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 12)

2. On January 16, 2001, the Department received the request for exemption of Peoria County PINs 18-07-380-002 and 18-07-380-008. On April 26, 2001, the Department denied the requested exemptions finding that the properties were not in exempt ownership and use. On January 16, 2001, the Department received the request for exemption of Peoria County PINs 18-08-489-003 through 18-08-489-007. On April 26, 2001, the Department denied the requested exemptions finding that the properties were not in exempt ownership and use. On May 24, 2001, the applicant timely protested the denials and requested a hearing. The hearing on October 23, 2001, was held pursuant to that request. (Dept. Ex. No. 1)

3. The applicant acquired PINs 18-07-380-002 and 18-07-380-008 by a warranty deed dated January 5, 2000. Located on the subject properties are two duplexes. There are two (2) two bedroom units and two (2) three bedroom units each with a basement. (Dept. Ex. No. 1)

4. The first of the duplexes was rented on July 27, 2000, for \$111.00 per month. The second duplex was rented on August 14, 2000, for \$62.00 per month, and the third was rented on September 7, 2000, for \$97.00 per month. The applicant anticipates that the fourth unit will be occupied in January 2001. The range of rent charged at the time of the hearing was \$79.00 to \$150.00 depending on the tenant's income. The government does not subsidize the rental of the units. (Dept. Ex. No. 1; Tr. pp. 29-31)

5. The applicant's lease agreements for the duplexes contain provisions for rent, a security deposit of \$200.00, and repossession of the property if the lessee does not pay the rent

due. The applicant has never waived rental charges or the security deposit. The applicant evicted a tenant who was unable to keep the utilities on. (Dept. Ex. No. 1; Tr. pp. 35-36)

6. The applicant acquired PINs 18-08-489-004 through 18-08-489-007 by a warranty deed dated May 25, 2000. The applicant did not provide a deed to PIN 18-08-489-003. Located on PINs 18-08-489-004 through 18-08-489-007 is a three story building with a basement that contains 36,000 square feet, known as the “Old Salvation Army Building.” (Dept. Ex. No. 1)

7. The entities utilizing the building are: South Side Office of Concern for its administrative office and food pantry - 4,783 square feet; South Side Office of Concern’s “Phoenix House,” a shelter and housing program for men – 12,450 square feet; Peoria Citizens Committee for Economic Opportunities for a Head Start early childhood education office – 2,100 square feet; the applicant for administrative offices and storage area – 5,650 square feet; and a law office of 140 square feet. Approximately 10,529 square feet of the building is vacant. (Dept. Ex. No. 1)

8. South Side Office of Concern provides services to the poor in crisis. It offers food to individuals in short-term crises and provides emergency food referral to other food pantries. It provides housing to homeless men with special needs. It assists the homeless with subsidized housing. It works in conjunction with other social service agencies to provide support for the homeless and poor. (Applicant’s Ex. No. 1; Tr. p. 20)

9. South Side Office of Concern executed a ten year lease with Pioneer Properties, the preceding owner of the building, on December 31, 1992, for the entire third floor of the building and the front ½ of the second floor for “Phoenix House.” The applicant charges a monthly rent of \$4,500.00 for the area. The rent is adjustable depending upon rent increases that the lessee receives from the Peoria Housing Authority. The lease includes a provision for late fee charge of \$100.00 after the 10th of the month. (Dept. Ex. No. 1)

10. South Side Office of Concern operates Phoenix House. Phoenix House is a 30 room shelter that is permanent housing for men with chemical or alcohol dependency. The

property is used as the personal residence of occupants and social service agencies duly approved by the Peoria Housing Authority. South Side Office of Concern also operates its food pantry in the old Salvation Army building. Their administration offices and caseworkers are to be found on the subject property. (Tr. pp. 20-21, 38-39)

11. On June 1, 1995, South Side Office of Concern executed an eight year property lease with Pioneer Properties for space in the building. The lease is for 2,133 square feet on the mezzanine as office space; 1,325 square feet on the first floor for a food pantry; and 1,325 square feet of the basement for storage. The rent for the area is \$1,380.00 per month adjustable annually based upon the Consumer Price Index. The lease states that a late fee of \$100.00 is imposed after the 10th of the month. (Dept. Ex. No. 1)

12. Peoria Citizens Committee for Economic Opportunity, Inc. is a community action agency. Its major areas of services include community economic development, early childhood education and family development, housing and related services, human development services, and advocacy for civil and human rights. (Applicant's Ex. Nos. 2, 3; Tr. pp. 21-24)

13. Peoria Citizens Committee for Economic Opportunities, Inc. executed a three year lease with the applicant on July 30, 1998, for offices in the building for its early education staff. The monthly rent is \$633.00. A late charge of \$25.00 is imposed after the 10th of the month. (Dept. Ex. No. 1)

14. The applicant was incorporated under the general not for profit corporation act on October 28, 1994. The purpose clause states in part:

The purposes for which the Corporation is organized are:

- (a) To provide civic services of all kinds and nature to low and moderate income individuals and their families, and any and all other acts it is authorized by law to do, as deemed necessary or desirable by the Corporation.
- (b) The Corporation is irrevocably dedicated to and operated exclusively for nonprofit purposes; and no part of the income or assets of the Corporation shall be distributed to nor inure to the benefit of its

Members, Directors, Officers, or any individual; Directors and officers shall serve without compensation. . . .

- (g) Said Corporation is organized exclusively for charitable, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Sec. 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any future United States Internal Revenue Law). (Dept. Ex. No. 1)

15. The purpose of the applicant according to its bylaws is “[T]his Corporation is organized under the Illinois General Not for Profit Corporation Act and pursuant to the applicable provisions of the Act. (The purpose of the Corporation is to provide adequate, safe and sanitary housing accommodations and provide civic services of all kinds and nature for persons of low and moderate income).” (Dept. Ex. No. 1)

16. In a March 2, 2001, letter to the applicant from the Department of the Treasury it states, “[O]ur records indicate that the advance ruling period has expired and you are now classified as a private foundation that files Form 990PF. Your original determination stated you were exempt under Section 501(c)(3) and recognized as a public charity.” The letter was for the tax period of December 31, 1999. (Dept. Ex. No. 1)

17. The portion of the property that was shown on the initial application as used for storage by the applicant is, in fact, being used to store donations to Central Illinois Friends of PWA, Inc. (Tr. pp. 26-27)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services . . .

The applicant was previously granted a partial property tax exemption for real property that it owned at that time. Since a cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years, the decision that property was taxable in certain years is not *res judicata* as to status of property during subsequent years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981), Application of County Collector of Du Page County, 157 Ill.App.3d 355 (2nd Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App. 3d 816 (3rd Dist. 1978); Du Page County Bd. Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995); People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980). I therefore find that the ownership and use of Parcel Index Nos. 18-07-380-002, 18-07-380-008, and 18-08-489-003 through 18-08-489-007 are at issue.

The applicant acquired PINs 18-07-380-002 and 18-07-380-008 by a warranty deed dated January 5, 2000. The applicant acquired parcels 18-08-489-004 through 18-08-489-007 by a warranty deed dated May 25, 2000. The applicant did not provide a deed for PIN 18-08-489-003. I therefore find that the applicant did not establish that it owned PIN 18-08-489-003 during the taxable year at issue.

Located on PINs 18-07-380-002 and 18-07-380-008 are four duplexes, three of which were leased in 2000 for rents that ranged in amounts from \$62.00 to \$111.00. The applicant charges a security deposit of \$200.00 and has no provision for a waiver of the security deposit or rent in the event of a tenant's inability to pay. In fact, the applicant evicted a tenant who was unable to keep the utilities on.

Located on PINs 18-08-489-004 through 18-08-489-007 is the old Salvation Army building. The applicant rents out sections of the building to various agencies for administrative services, a shelter and a food pantry for the homeless, a law office, and storage areas. The issue before me is whether the applicant's ownership and use of the three buildings is charitable.

The Illinois courts have long refused to apply the charitable exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of the law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

. . . a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all institutions of public charity share the following distinctive characteristics:

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,
- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
- 6) the term "exclusively used" means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

The criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula; however, they are guidelines that help to analyze whether an applicant is a charitable organization that uses property for charitable purposes. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561).

The applicant charges rents for the duplexes and the old Salvation Army building. Although the Illinois courts have held that charging fees to a person who has the ability to pay will not destroy a charitable exemption, Small v. Pangle, 60 Ill.2d 510 (1975), the criteria states that an applicant must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed, and must dispense charity to all that need and apply for it.

The applicant has no provision for a waiver of fees or rents charged in either its bylaws or articles of incorporation and, in fact, has evicted a tenant in a duplex for the inability to pay for utilities. It is well settled in Illinois that the character and purpose for which a corporation is organized, must be ascertained from its articles of incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922), and also, Rotary International v. Paschen, 14 Ill.2d 480 (1958). Applicant's articles of incorporation and bylaws provide that it is organized to provide civic services to individuals and families with low and moderate income and not primarily for charitable purposes.

The applicant therefore has not established that it benefits an indefinite number of people for their general welfare, dispenses charity to all that need and apply for it, does not place obstacles in the way of those who need and would avail themselves of the benefits dispensed, or that the exclusive use of the buildings is charitable.

Another guideline under Methodist Old Peoples Home is that funds must be derived mainly from public and private charity. The applicant alleges that the duplexes were purchased under a Housing and Urban Development Program for persons with AIDS. (Tr. pp. 27-28) The applicant provided no documentation of that fact or that grant money was used for the purchase of the property.

The financial information in the “Year-to-Date Comparison” packet submitted with the application shows donation income for the period of January through December 2000 of \$115,000.00 and an energy grant of \$53,384.00¹. The Year-to-Date Comparison had a notation at the end that the grant income was really a gift of building equity by the grantees of the building in the amount of \$115,000.00. The notation also states that a grant received of \$120,000.00² for the duplexes was also shown as income. It is unclear where in the comparison that \$120,000.00 grant income is included. The notation also states “Thus, of the amount shown in the financial statement as income, only \$10,444.20 is actual income of the corporation for the year 2000.” The total income shown on the document is \$619,689.48. Of that amount, \$168,384.00 is the donation income of \$115,000.00 and the energy grant of \$53,384.00; \$242,120.00 is from HOPWA³; management fee income is \$11,011.76; rental income is \$175,898.21; and utilities income is \$18,845.95 for the total income of \$619,689.48.

The Year to Date Comparison shows rental income of \$175,898.21. If the “donation” and “grant” income amounts are removed, the Year to Date Comparison indicates that the applicant’s major source of income is from HOPWA and rentals. The applicant admits that the donation income of \$115,000 is really a gift of building equity and not donation income. The applicant did not explain what the energy grant is. The applicant did not explain what HOPWA is or does. The notation at the end states that only \$10,444.20 is actual income; yet the balance sheet, another financial document submitted, shows a checking and savings balance of \$20,667.00 as of December 31, 2000. The balance sheet also shows total assets and liabilities of \$1,301,661.86. It is impossible to tell from the financial information submitted that the applicant derives its funds mainly from public and private charity and holds such funds in trust for the objects expressed in the charter.

¹ No information was received regarding this grant.

² No information was received regarding this grant.

³ The acronym HOPWA is used in the Year to Date comparison but is not explained.

The applicant has not established that it had a 501(c)(3) designation from the Internal Revenue Service in 2000 or that it has no capital, capital stock, shareholders, or earns no profits or dividends.

The applicant uses the subject properties for rental and administration purposes. Therefore, the applicant has not established that it is a charitable organization using the subject properties for charitable purposes under the guidelines set forth in Methodist Old Peoples Home.

For the foregoing reasons it is recommended that PINs 18-07-380-002 and 18-07-380-008 remain on the tax rolls for the period of January 5, 2000 through December 31, 2000, the period of the 2000 assessment year that the applicant owned the properties. It is recommended that PINs 18-08-489-004 through 18-08-489-007 remain on the tax rolls for the period of May 25, 2000 through December 31, 2000, the period of the 2000 assessment year that the applicant owned those properties. It is also recommended that PIN 18-08-489-003 remain on the tax rolls for the 2000 assessment year, as the applicant has not established that it owned or used that property.⁴

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
April 2, 2002

⁴ The supervisor of assessment's office was contacted and Parcel Index No. 18-08-489-003 is not exempt from taxation.